



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

BACHMAN & LAPOINTE, P.C.
900 CHAPEL STREET
SUITE 1201
NEW HAVEN, CT 06510

COPY MAILED

OCT 02 2006

OFFICE OF PETITIONS

In re Application of

Shimpei Morioka

Application No. 10/767,695

Filed: January 29, 2004

Attorney Docket No. 04-146

: DECISION ON PETITION

This is a decision on the petition to withdraw the holding of abandonment under 37 CFR 1.181(a), filed July 31, 2006.

The petition is **granted**.

This application was held abandoned May 1, 2006, after no reply was received to the Notice of Allowance and Issue Fee Due mailed January 30, 2006. The notice set forth a statutory period of reply of three months from its mailing date. No response was received within the allowable period and the application became abandoned on May 1, 2006. A Notice of Abandonment was mailed July 19, 2006. The instant petition was filed on July 31, 2006. Petitioner maintains that the notice was never received and provides a copy of the relevant docketing calendar as proof of the same.

Section 711.03(c)(II) of the *Manual of Patent Examining Procedure* ("MPEP") provides that in order to establish non-receipt of an Office action so as to prove that the imposition of a holding of abandonment is improper, petitioner must: 1) provide a statement to the Office indicating that the Office action was not received by petitioner; 2) include in the statement an attestation to the fact that a review of the file jacket and docket records maintained by petitioner indicates that the Office action was not received; and 3) provide a copy of the docket record where the non-received Office communication would have been entered had it been received and docketed.

Petitioner has met the burden of proof as established by Section 711.03(c)(II) of the MPEP. The holding of abandonment is, therefore, withdrawn.

The application file is being forwarded to the Office of Patent Publication for further processing that may include remailing the notice and resetting of the period for reply.

Questions concerning this decision should be directed to the undersigned at (571) 272-3222.



Kenya A. McLaughlin
Petitions Attorney
Office of Petitions